

1 **Proposed Local Rules of Criminal Procedure**
2 **For Comment by May 31, 2006**

3 **NOTE: THE OLD RULES HAVE BEEN RENUMBERED TO REFLECT THE NEW UNIFORM NUMBERING**
4 **SYSTEM. ALL EXISTING RULES HAVE BEEN AMENDED, WHERE APPROPRIATE, TO SUBSTITUTE THE**
5 **WORD “TRANSMIT” FOR “MAIL” IN ORDER TO ACCOMMODATE THE NEW ELECTRONIC FILING**
6 **PROCEDURES. ALL INTERNAL RULE REFERENCES HAVE BEEN MODIFIED CONSISTENT WITH THE**
7 **NEW NUMBERING SYSTEM. ALL REFERENCES TO THE UNITED STATES CODE AND THE FEDERAL**
8 **RULES OF CRIMINAL PROCEDURE HAVE BEEN MADE UNIFORM. THE RULES THAT ARE MARKED**
9 **“NEW” ARE NEW RULES. THE RULES THAT HAVE BEEN MARKED “OLD” ARE THE OLD RULES.**
10 **THE RULES THAT ARE MARKED “AMENDED” ARE OLD RULES THAT HAVE BEEN AMENDED,**
11 **WITH DELETIONS INDICATED BY ~~STRIKE-THROUGHS~~ AND INSERTIONS INDICATED BY**
12 **UNDERSCORING. SOME OF THE RULES WHICH ARE “NEW” TO THE LOCAL CRIMINAL RULES ARE**
13 **DERIVED FROM EITHER “OLD” OR “NEW” LOCAL CIVIL RULES.**

14
15 **[AMENDED] LR Cr P 5.1.1. Pretrial Services Interview.** ~~Probation and~~ Pretrial services
16 officers (or probation officers acting in the capacity of pretrial services officers), to the extent
17 practicable, shall attempt notification of counsel prior to conducting pretrial services interviews.
18 If counsel cannot attend an interview, the information provided by the defendant shall be made
19 available to counsel upon request, in accordance with LR Crim P 5.1.2.

20
21 **[NEW] LR Cr P 5.1.2. Disclosure of Pretrial Services Information.** A written pretrial services
22 report will, if possible, be provided to counsel in the courtroom when a defendant makes an initial
23 appearance, and will be provided to counsel in the courtroom when a defendant appears for a
24 detention hearing. Pretrial services information is confidential, pursuant to the provisions of 18
25 U.S.C. § 3153(c) and regulations promulgated by the Administrative Office of the United States
26 Courts. Judicial officers may disclose pretrial services information, in whole or in part, upon a
27 showing of good cause. When a demand for disclosure of pretrial services information regarding
28 a defendant is made by service of a subpoena or other judicial process upon a probation officer, the
29 probation officer may petition in writing seeking instructions from the court regarding a response
30 to the subpoena.

1 **[NEW] LR Cr P 5.1.3. Modification of Conditions of Pretrial Release.** The pretrial services
2 or probation officer may, in the exercise of his/her discretion, meet with the defendant and defense
3 counsel and modify conditions of release. Following such meeting, if any, a Consent to Modify
4 Conditions of Release (PS 42) shall be completed and submitted to the judicial officer for signature
5 and filing.

6
7 **[NEW] LR Cr P 7.1. Assignment of Cases.** Cases filed shall be assigned by the clerk to a judge
8 at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall
9 not reveal the case assignment allocation or sequence of the electronic method to anyone, unless
10 ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

11
12 **[NEW] LR Cr P 7.2. Reassignment of Cases.** The clerk is authorized to sign orders to reassign
13 cases when needed and as directed by a judge of this court.

14
15 **[AMENDED] LR Cr P 10.1. Arraignments and Plea.** (a) *Notice of Date and Time.* ~~It is the~~
16 ~~duty of the government to give~~ The attorney for the government shall timely notify the defendant
17 of the date and time of defendant's arraignment ~~on~~ and plea to an indictment. ~~A copy of the notice~~
18 ~~shall be furnished~~ The government attorney shall furnish a copy of the notice concurrently to
19 defendant's counsel if counsel's name and address are shown on the docket or known to the
20 government. When the indictment is based on substantially similar allegations that form the basis
21 of an earlier complaint before a magistrate judge, the government attorney shall notify counsel who
22 appeared for defendant before the magistrate judge of the date and time of the arraignment. ~~When~~
23 ~~the United States Attorney has knowledge that a~~ If a defendant is without counsel, ~~that fact shall~~

1 ~~be promptly brought to the attention of~~ the government attorney shall promptly notify the
2 appropriate judicial officer of that fact, so early provision of counsel may be considered.

3 (b) *Notice of motion to dismiss.* The ~~United States Attorney~~ government attorney shall serve
4 on the defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a
5 complaint pending before a judicial officer.

6 (c) *No further notice.* No other or further notice of arraignment and plea or motion to
7 dismiss need be given by the clerk except on order of the court.

8
9 **[NEW] LR Cr P 12.1. Pretrial Motions.** (a) *Date for filing pretrial motions in lieu of standard*
10 *request for discovery.* If a defendant does not elect to use the standard request for discovery, the
11 magistrate judge shall, at arraignment, set a date within 20 days of arraignment for filing
12 defendant's pretrial motions.

13 (b) *Date for filing pretrial motions in addition to standard request for discovery.* If
14 defendant elects to use the standard request for discovery, defendant must file any additional
15 pretrial motions (i.e., non-discovery) by the date established in the Arraignment Order and Standard
16 Discovery Request Form (~~Appendix of Forms~~) available from the clerk and on the court's website.

17 (c) *Time for response to pretrial motions.* The government has 7 days to respond to motions
18 filed by defendant under paragraphs (a) and (b) of this rule.

19 (d) *Pretrial hearing.* The pretrial hearing will be held at least 14 days prior to trial, unless
20 otherwise ordered by the court *sua sponte* or on motion for good cause. If the parties agree a
21 hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing
22 requires the taking of evidence, the parties must notify the district judge in advance.

1 (e) Courtroom technology. If any courtroom technology is required , counsel must request
2 any such technology for use at trial or other proceeding and make a certification that the court's
3 technology staff has been notified. The certification regarding such notification shall be filed with
4 the clerk no later than 5 business days before the scheduled commencement of the trial or other
5 proceeding.

6
7 **[AMENDED] LR Cr P 16.1. Arraignment and Standard Discovery Requests.** (a) *Standard*
8 *discovery request form.* At arraignment on an indictment, or on an information or complaint in a
9 misdemeanor case, counsel for the defendant and the government may make standard requests for
10 discovery as contained in the Arraignment Order and Standard Discovery Request form (~~Appendix~~
11 ~~of Forms~~) available from the clerk and on the court's website. The form shall be signed by counsel
12 for the defendant and the government and entered by the magistrate judge.

13 (b) *Reciprocal discovery.* If counsel for the defendant requests discovery under FR Cr P
14 16(a)(1)(E), (F) or (G), in an Arraignment Order and Discovery Request form, the defendant is
15 obligated to provide any reciprocal discovery that may be available to the government under FR Cr
16 P 16(b)(1)(A), (B) or (C).

17 (c) *Time for government response.* Unless the parties agree otherwise, or the court so
18 orders, within 10 days of the Standard Discovery Request, the government must provide the
19 requested material to counsel for the defendant and file with the clerk a written response to each
20 of defendant's requests ~~with the clerk.~~

21 (d) *Time for reciprocal discovery response.* ~~All reciprocal discovery due the government~~
22 ~~must be provided by defendant within 10 days of the receipt of the materials and the filing and~~
23 ~~serving of responses in paragraph (c).~~ Defendant must provide all reciprocal discovery due the

1 government within 10 days of receiving the materials and the filing and serving of responses in
2 paragraph (c).

3 (e) *Defense discovery request deemed speedy trial motion.* ~~Defendant must file all~~
4 ~~additional motions within 10 days of providing materials and filing and serving of responses in~~
5 ~~paragraph (c).~~ Any request made by the defendant pursuant to this rule will be deemed a motion
6 under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.

7 (f) *Duty to supplement.* ~~If defendant does not make the standard request for discovery~~
8 ~~pursuant to paragraph (a), the magistrate judge shall, at arraignment, set a date within 20 days of~~
9 ~~arraignment for filing of defendant's pretrial motions.~~ All duties of disclosure and discovery in this
10 rule are continuing. The parties must produce any additional discovery as soon as they receive it,
11 and in no event later than the time for such disclosure as required by law, rule of criminal
12 procedure, or order of the court, and without the necessity of further request by the opposing party.

13 (g) ~~The government shall have 7 days to respond to motions filed by defendant under~~
14 ~~paragraphs (e) and (f).~~

15 (h) ~~At arraignment, the magistrate judge shall establish a date and time for a pretrial hearing~~
16 ~~before the assigned district judge. The pretrial hearing shall be held at least 14 days prior to trial,~~
17 ~~unless otherwise ordered by the court sua sponte or on motion for good cause. If the parties agree~~
18 ~~a hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing~~
19 ~~will require the taking of evidence, the parties must notify the district judge in advance.~~

20 (i) ~~Any request made by the defendant pursuant to this rule will be deemed a motion under~~
21 ~~the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.~~

22 (j) ~~All duties of disclosure and discovery in this rule are continuing, and the parties must~~
23 ~~produce any additional disclosure and discovery as soon as it is received.~~

1 **[NEW] LR Cr P 18.1. Principal Offices.** The headquarters of the United States District Court
2 for the Southern District of West Virginia and its Clerk is located in the Robert C. Byrd United
3 States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing
4 address is P.O. Box 2546, Charleston, West Virginia 25329.

6 **[NEW] LR Cr P 18.2. Divisions.** The Southern District of West Virginia is composed of 23
7 counties. Each of these counties is assigned to 1 of 5 administrative divisions. Each division is
8 given the name of the city in the division where the court and offices of its clerk are located. The
9 divisions, addresses of division offices, and counties comprising each division are as follows:

10 **Division 1: Bluefield**

11
12 Elizabeth Kee Federal Building
13 Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701
14 Mailing address: P.O. Box 4128, Bluefield, West Virginia 24701
15 Counties Composing Division: Mercer, Monroe and McDowell

17 **Division 2: Charleston**

18
19 Robert C. Byrd United States Courthouse
20 Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301
21 Mailing address: P.O. Box 2546, Charleston, West Virginia 25329
22 Counties Composing Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas,
23 Putnam and Roane

25 **Division 3: Huntington**

26
27 Sidney L. Christie Federal Building
28 Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701
29 Mailing address: P.O. Box 1570, Huntington, West Virginia 25716
30 Counties Composing Division: Cabell, Mason and Wayne

Division: 5: Beckley

Robert C. Byrd Federal Building and Courthouse,
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801
Mailing address: P.O. Drawer 5009, Beckley, West Virginia 25801
Counties Composing Division: Fayette, Greenbrier, Summers, Raleigh and Wyoming

Division 6: Parkersburg

Federal Office Building
Address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Mailing address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102
Counties Composing Division: Wirt and Wood
The court will occasionally convene in Lewisburg to deal with matters falling within either the
Beckley or Bluefield Division.

[This rule has been amended generally to reflect the correct address for each of the divisions].

[OLD] LR Cr P 23.1. Opening Statements in Criminal Trials. At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the court, the opening statements shall be made immediately after the case is called for trial; but, for good cause shown, the court, on request of the defendant, may defer the opening statement for a defendant until the time for commencing presentation of that defendant's direct evidence. Opening statements shall be subject to time limitations imposed by the court. If the action involves more than one defendant, the court, after conferring with the parties to the action, shall determine the order and time of the opening statements.

1 **[NEW] LR Cr P 26.1. Addressing the Court; Examination of Witnesses.** Attorneys and pro
2 se litigants must stand and speak clearly when addressing the court. Only one attorney for each
3 party may participate in examination and cross-examination of a witness. With the court's
4 permission, the attorney may approach a witness to present or inquire about an exhibit.

5
6 **[OLD] LR Cr P 30.1. Jury Instructions.** In all criminal cases, counsel for the defendant and for
7 the government shall submit jury instructions to the court prior to the commencement of a jury trial,
8 or earlier if ordered by the court. When it is necessary for counsel for the defendant to submit one
9 or more jury instructions on an ex parte basis, those instructions must be disclosed to the
10 government no later than the charge conference or when specified by the court. Subject to court
11 approval, counsel may amend or supplement jury instructions after commencement of trial.

12
13 **[NEW] LR Cr P 31.1. Contact with Jurors.** After conclusion of a trial, no party, nor his or her agent
14 or attorney, shall communicate or attempt to communicate with any member of the jury, including
15 alternate jurors who were dismissed prior to deliberations, about the jury's deliberations or verdict without
16 first applying for (with notice to all other parties) and obtaining, for good cause, an order allowing such
17 communication.

18
19 **[AMENDED] LR Cr P 32.1. ~~Pretrial services and Presentence Interview.~~** Probation and pretrial
20 ~~service officers, to the extent practicable, shall attempt notification of counsel prior to conducting pretrial~~
21 ~~service interviews.~~ Probation and pretrial service officers shall notify counsel, prior to conducting the
22 presentence interview of the defendant, of the date, time and place of the interview. If counsel cannot

1 attend an interview, the information provided by the defendant shall be made available to counsel upon
2 request in accordance with LR Crim P 32.2.

3
4 **[NEW] LR Cr P 32.2. Disclosure of Presentence Reports and Probation Records.**

5 *(a) Disclosure of presentence reports.* Disclosure of presentence reports is governed by 18 U.S.C.
6 § 3552(d) and FR Crim P 32. Except as specifically provided by statute, rule, regulation, or guideline
7 promulgated by the Administrative Office of the United States Courts, or LR Crim P 32.3, no
8 confidential records of the court maintained by the probation office, including presentence reports
9 and probation or supervised release records, shall be producible except by written petition to the
10 court, particularizing the need for specific information. When a demand for disclosure of
11 presentence and probation records is made by way of subpoena or other judicial process to a
12 probation officer, the probation officer may petition in writing seeking instructions from the court
13 regarding a response to the subpoena. No disclosure shall be made except upon order of the court.

14 *(b) Disclosure of probation office recommendation.* The probation officer shall not disclose
15 to anyone other than the court the officer's recommendation as to the sentence.

16
17 **[NEW] LR Cr P 32.3 Modification or Revocation of Probation or Supervised Release.**

18 *(a) Petition for modification or revocation.* (1) A petition for modification or revocation of
19 probation or supervised release shall be set forth on the form adopted for that purpose by the
20 Administrative Office of the United States. The petition shall be presented to the sentencing judge.
21 The sentencing judge shall determine whether the petition shall be filed.

1 (2) The petition shall set forth the facts allegedly constituting the violation of probation or
2 supervised release. The petition shall also seek either a summons or an arrest warrant, modification
3 of the terms of release, or no action.

4 (3) A petition ordered filed shall be served upon the probationer or releasee, the attorney for
5 the government, and last known counsel of record except that in all cases in which prior counsel was
6 appointed pursuant to the Criminal Justice Act, the Office of the Federal Public Defender shall be
7 served in lieu of service upon prior counsel. Unless the court orders an arrest warrant be issued, the
8 petition shall be served upon the probationer or releasee after arrest, but in no event later than the
9 initial appearance.

10 ***(b) Disclosure of evidence.*** The probation officer shall, without further request by the
11 probationer, or releasee, or his/her counsel, disclose to the probationer or releasee or his/her counsel,
12 all evidence against the probationer or releasee, including any potential oral statement and any
13 potentially exculpatory material. Any information disclosed by the probation officer to an attorney
14 for the government shall be promptly disclosed by the probation officer to probationer or releasee
15 or to his/her counsel.

16 ***(c) Recommendation for revocation of probation or supervised release.*** If after a hearing the
17 defendant is found to have violated the terms of probation or supervised release, the probation officer
18 may make a recommendation to the court. The reasons supporting the recommendation shall be
19 disclosed to the parties if such reasons are evidence against the probationer or releasee, as shall any
20 response by the probation officer to recommendations by counsel.

21 ***(d) Request for modification of the terms of probation or supervised release.*** No terms of
22 probation or supervised release shall be modified upon a waiver of counsel by the probationer or
23 releasee unless and until the probationer or releasee shall have consulted with counsel regarding the

1 advisability of waiving counsel. Any such waiver of counsel must certify that the probationer or
2 releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel
3 may be made by the probationer or releasee before a magistrate judge.

4
5 **[NEW] LR Cr P 44.1. Admission of Attorneys.** *(a) Admission as member of bar of court.* Any
6 person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who
7 is in good standing as a member of its bar is eligible for admission as a member of the bar of this
8 court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a
9 member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If
10 the motion for admission is granted, the applicant shall take the attorney's admission oath or
11 affirmation, sign the attorneys' register, and pay the clerk the admission fee.

12 *(b) Sponsorship of visiting attorneys by members of court.* An attorney may sponsor another
13 attorney for membership or for *pro hac vice* status (Visiting Attorney) if the Sponsoring Attorney
14 is a member of the bar of this court, has an office for the practice of law in West Virginia, and
15 practices law primarily in West Virginia.

16 *(c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.*
17 Any attorney employed by the United States Attorney or the Federal Public Defender for this judicial
18 district must qualify as a member of the bar of this court within one year of his or her employment.
19 Until so qualified, the attorney may appear and practice under the sponsorship of the appointing
20 officer.

21 *(d) Appearance by federal government attorneys.* Federal government attorneys who are not
22 members of the bar of this court need not complete the Statement of Visiting Attorney. In cases
23 where the United States Attorney is associated with other government attorneys in proceedings

1 involving the Federal government, the United States Attorney (except in student loan collection
2 cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other
3 papers filed and served by the United States. All pleadings, notices, and other papers involving the
4 Federal government may be served on the United States Attorney in accordance with the service
5 requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

6
7 **[NEW] LR Cr P 44.2. Legal Assistance by Law Students.** *(a) Written consent.* With the written
8 consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf
9 of that indigent. With the written consent of the United States Attorney or his or her representative,
10 an eligible law student may also appear on behalf of the United States. With the written consent of
11 the Federal Public Defender, an eligible law student may appear on behalf of the Federal Public
12 Defender. With the written consent of the Attorney General of the State of West Virginia or his or
13 her representative, an eligible law student may also appear on behalf of the State of West Virginia.
14 In each case in which an eligible law student appears, the consent shall be filed with the clerk.

15 *(b) Responsibilities of attorneys of record.* An eligible law student may assist in the
16 preparation of pleadings, briefs, and other documents to be filed in this court, but such pleadings,
17 briefs, or documents must be signed by the attorney of record. An eligible law student may also
18 participate in hearings, trials, and other proceedings with leave of court, but only in the presence of
19 the attorney of record. The attorney of record shall assume personal professional responsibility for
20 the law student's work. The attorney of record shall be familiar with the case and be prepared to
21 supplement or correct any written or oral statement made by the law student.

1 (c) *Eligibility requirements.* To be eligible to appear pursuant to this rule, the law student
2 must:

3 (1) be enrolled in a law school approved by the American Bar Association;

4
5 (2) have successfully completed legal studies for at least 4 semesters, or the
6 equivalent if the school is on some basis other than a semester basis;

7
8 (3) be certified by the dean of his or her law school as being of good
9 character and competent legal ability. The dean's certification shall be filed
10 with the clerk. This certification may be withdrawn by the dean at any time
11 without notice or hearing and without any showing of cause by notifying
12 the clerk in writing, or it may be terminated by the court at any time
13 without notice of hearing and without any showing of cause. Unless
14 withdrawn or terminated, the certification shall remain in effect for 18
15 months after it has been filed with the clerk or until the law student has
16 been admitted as a permanent member of the bar of this court, whichever
17 is earlier;

18
19 (4) certify in writing to the clerk that he or she has read the Code of
20 Professional Conduct of the American Bar Association;

21
22 (5) be introduced to the court by a permanent member of the bar of this
23 court; and

24
25 (6) neither ask for nor receive any compensation or remuneration of any
26 kind for services from the party assisted, but this shall not prevent an
27 attorney, legal services program, law school, public defender agency, the
28 State of West Virginia, or the United States from paying compensation to
29 the law student, nor from making appropriate charges for such services.

30
31
32 **[NEW] LR Cr P 44.3. Representation of Parties.** Every party to proceedings in this
33 court, except parties appearing *pro se*, shall be represented by a member of the bar of this
34 court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided
35 in these rules. A corporation or unincorporated association cannot appear *pro se*.
36

1 **[NEW] LR Cr P 44.4. Termination of Representation.** No attorney who has entered an
2 appearance in any criminal action shall withdraw the appearance or have it stricken from
3 the record, except by order.

4
5 **[NEW] LR Cr P 44.5. Pro se Appearances.** A party who represents himself or herself
6 shall file with the clerk his or her complete name and address where pleadings, notices,
7 orders, and other papers may be served on him or her, and shall include his/her telephone
8 number. A *pro se* party must advise the clerk promptly of any changes in name, address,
9 and telephone number.

10
11 **[NEW] LR Cr P 44.6. Admission of Visiting Attorneys.** *(a) Procedure for admission.*
12 Any person who has not been admitted to practice before the Supreme Court of Appeals
13 of West Virginia, but who is a member in good standing of the bar of the Supreme Court
14 of the United States, the bar of the highest court of any other state in the United States, or
15 the bar of the District of Columbia, and who has not been convicted of a felony, shall be
16 permitted to appear as a Visiting Attorney in a particular case in association with a
17 Sponsoring Attorney as herein provided. The Visiting Attorney shall file with the clerk,
18 at or before his or her initial appearance (including signing a pleading), the Statement of
19 Visiting Attorney adopted by order of this court, which is available from the clerk and on
20 the court's website, and shall pay the Visiting Attorney fee. The Statement shall designate
21 a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served.
22 The Sponsoring Attorney shall consent to the designation and shall thereafter sign all
23 papers that require the signature of an attorney. Any paper filed by a Visiting Attorney not

1 in compliance with this Rule may be stricken from the record after 15 days' written notice
2 transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon
3 compliance with this rule and introduction of the Visiting Attorney to the court by the
4 Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be
5 excused from further attendance during the proceedings and the Visiting Attorney may
6 continue to appear in that particular case.

7 (b) *Motion not required.* Filing a properly completed Statement of Visiting
8 Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying
9 as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney
10 is required.

11 (c) *Payment of visiting attorney fee.* (1) Fee payable to clerk. The court will
12 charge a Visiting Attorney fee, payable to the Clerk, United States District Court, in an
13 amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used
14 only for "purposes which inure to the benefit of the members of the bench and the bar in
15 the administration of justice." Other than library materials, the fees will not be used to
16 supplement appropriated funds and will not be used to pay for materials or supplies
17 available from statutory appropriations. The fees will be placed in a fund administered by
18 the clerk as custodian of the fund. Disbursements will be made only at the direction of a
19 committee, the members of which will be appointed by the Chief Judge, in accordance with
20 a written plan.

21 (2) West Virginia State Bar *pro hac vice* fee. The *pro hac vice* fee imposed by the
22 Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid
23 to The West Virginia State Bar and is not payable to the clerk of the district court.

1 (d) *Exceptions to payment of visiting attorney fee. Exceptions to payment of*
2 *visiting attorney fee.* (1) Miscellaneous cases. A Visiting Attorney who files a
3 miscellaneous case which does not require judicial action (e.g., one filed in order to obtain
4 a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a
5 Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting
6 Attorney who files a miscellaneous case which does require judicial action (e.g., motion
7 to compel testimony at a deposition) must comply with Rule 44.6.

8 (2) Federal government attorneys. Attorneys employed by the United States
9 Department of Justice or any other Federal department or agency will not be required to
10 pay the Visiting Attorney fee.

11 (3) Law students. Law students who participate in a case in accordance with these
12 Rules will not be charged a Visiting Attorney fee

13 (e) *Waiver of payment of visiting attorney fee.* A Visiting Attorney and his/her
14 Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in
15 a particular case or cases, for good cause shown. The motion will be decided by the judge
16 assigned to the case; the motion should be filed within 20 days of the assignment of the
17 case to the judge. If a waiver is granted, the Visiting Attorney will pay such Visiting
18 Attorney fee in an amount as ordered by the presiding district judge.

19 (f) *Revocation of visiting attorney privilege.* For good cause, the presiding district
20 judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more
21 specified cases.
22

1 **[NEW] LR Cr P 44.7. Bias and Prejudice.** The United States District Court for the
2 Southern District of West Virginia aspires to achieve absolute fairness in the determination
3 of cases and matters before it and expects the highest standards of professionalism, human
4 decency, and considerate behavior toward others from its judicial officers, lawyers, and
5 court personnel, as well as from all witnesses, litigants, and other persons who come before
6 it. As to matters in issue before the court, conduct and statements toward one another must
7 be without bias with regard to such factors as gender, race, ethnicity, religion, handicap,
8 age, and sexual orientation when such conduct or statements bear no reasonable
9 relationship to a good faith effort to argue or present a position on the merits. Judicial
10 officers must ensure that appropriate action is taken to preserve a neutral and fair forum for
11 all persons. Nothing in this Local Rule, however, is intended to infringe unnecessarily or
12 improperly upon the otherwise legitimate rights, including the right of freedom of speech,
13 of any person, nor to impede or interfere with the aggressive advocacy of causes and
14 positions by lawyers and litigants.

15
16 **[NEW] LR Cr P 49.1. Filing Papers.** Except as otherwise permitted or required by the
17 Federal Rules, these Local Rules, or order, the original of all papers not electronically filed
18 shall be filed with the court at the clerk's office at the point of holding court in which the
19 particular action or proceeding is docketed. In emergency situations, due to travel
20 conditions, time limitations or other factors, filings may be made at any of the clerk's
21 offices, in which event the papers so filed shall be forwarded by the receiving clerk's office
22 to the clerk's office at the point of holding court in which the particular action or
23 proceeding is docketed. When electronically filing documents with the clerk's office, a

1 paper courtesy copy to the assigned judicial officer is not required except where any
2 motion, memorandum, response, or reply, together with documents in support thereof, is
3 50 pages or more in length.

4
5 **[NEW] LR Cr P 49.2. Filing by Facsimile or Electronic Means.** (a) The clerk's office
6 will not accept any facsimile transmission for filing unless ordered by the court.

7 (b) Pursuant to Fed. R. Crim. P 49(d), the clerk's office will accept pleadings or
8 documents filed, signed or verified by electronic means that are consistent with the
9 technical standards, if any, established by the Judicial Conference of the United States.
10 A pleading or document filed by electronic means in compliance with this Rule constitutes
11 a written paper for the purpose of applying these Rules and the Federal Rules of Criminal
12 Procedure. All electronic filings shall be governed by the court's Administrative Procedures
13 for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means for Criminal
14 Cases, the provisions of which are incorporated by reference, and which may be amended
15 from time to time by the court.

16
17 **[NEW] LR Cr P 49.3. E-Government Act.** All pleadings shall comply with the
18 guidelines for E-Government Act privacy and public access which are available on the
19 court's website.

20
21 **[NEW] LR Cr P 53.1. Photography in and Broadcasting From Courtroom.** The
22 taking or transmitting of photographs by any means or device in the courtroom, or in the
23 corridors immediately adjacent, during judicial proceedings or during any recess, and the

1 transmitting or sound recording of proceedings by radio, television, wireless device,
2 landline device, or other device is not permitted. Upon approval of the court and under its
3 supervision, proceedings, other than judicial proceedings, designed and conducted as
4 ceremonies, such as administering oaths of office to appointed officials of the court,
5 presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may
6 be photographed in or broadcast from the courtroom.

7
8 **[NEW] LR Cr P 53.2 Impoundment of Photography and Broadcasting Equipment.**

9 The United States Marshal may impound any camera, recording, broadcasting and other
10 related equipment brought into the courtroom or the adjacent corridors in violation of LR
11 Cr P 53.1. The impounded equipment shall be returned to its owner or custodian after the
12 proceedings have concluded.

13
14 **[AMENDED] LR Cr P 55.1. Custody and Disposition of Exhibits.** (a) *General rules*
15 *governing custody of exhibits.* After being marked for identification, exhibits of a
16 documentary nature admitted into evidence or made a part of the record in any case
17 pending or tried in this court shall be placed in the custody of the clerk unless otherwise
18 ordered. All other exhibits, models and materials admitted into evidence that cannot be
19 stored conveniently in the clerk's facilities shall be retained in the custody of the attorney
20 or party producing them ~~at trial~~ unless otherwise ordered, and the attorney or party shall
21 execute a receipt therefor. All exhibits admitted into evidence ~~in a criminal case~~ that are
22 sensitive in the nature of (for example, controlled substances, legal or counterfeit money,
23 firearms, materials depicting child pornography or obscenity, dangerous chemicals or

1 devices, ~~dangerous devices~~ or contraband of any kind), shall be retained by the United
2 States Marshal or his or her designee during the course of the hearing or trial. Following
3 the conclusion of the hearing or trial, any sensitive exhibit shall be returned to the party
4 who offered it. ~~pending disposition of the case and any appeal, and until the court~~
5 ~~authorizes destruction or other disposal of such exhibits.~~

6 (b) *Time for retention; availability for examination or inspection.* A party
7 or attorney who has custody of an exhibit shall keep it available for the use of this court or
8 any appellate court, until 2 years after the conclusion of the case and any direct appeal, and
9 shall grant the reasonable request of any party to examine or reproduce the exhibit for use
10 in the proceeding as appropriate. For the purpose of this Rule, the “conclusion of the case
11 and any direct appeal” refers to the time when a conviction becomes final for the purposes
12 of 28 U.S.C. § 2255.

13 (c) *Return of documentary exhibits; substitution of copies.* Upon
14 application to the court, the court may order ~~that~~ documentary exhibits retained by the clerk
15 be returned to the party ~~to whom they belong~~, who offered the exhibit, provided that copies
16 approved by counsel and unrepresented parties are filed in place of the originals.

17 (d) *Return of exhibits upon stipulation.* After final judgment and 1 year
18 after the time for motion for new trial and appeal has passed, or upon the filing of a
19 stipulation waiving and abandoning the right to appeal and to move for a new trial, the
20 clerk is authorized, without further order, to return all exhibits to the parties or their
21 counsel.

1 **[NEW] LR Cr P 55.2. Removal of Papers from Custody of Clerk.** Papers on file in the
2 office of the clerk shall be produced pursuant to subpoena from a court of competent
3 jurisdiction directing their production.

4 Papers may be removed from the files of the clerk only upon order except that the
5 clerk may permit temporary removal of papers by a district court judge, bankruptcy judge,
6 a magistrate judge, or a master in matters relating to their official duties.

7
8 The person receiving the papers shall provide to the clerk a signed receipt identifying the
9 papers removed.

10
11 **[NEW] LR Cr P 56.1. Sessions.** The court is considered open and in continuous session
12 in all divisions of the district on all business days throughout the year in accordance with
13 the provisions of 28 U.S.C. § 139, FR Cr P 56, and other controlling statutes and rules.

14
15 **[NEW] LR Cr P 58.1. Authority of Magistrate Judges in Misdemeanor Cases.**
16 Magistrate judges are specially designated to try persons accused of, and sentence persons
17 convicted of, misdemeanors committed within the Southern District of West Virginia, as
18 provided in 18 U.S.C. § 3401.

19
20 **[NEW] LR Cr P 58.2. Assignment of Misdemeanors and Petty Offenses.** Upon the
21 filing of an information, complaint, or violation notice, or the return of an indictment, all
22 misdemeanor and petty offense cases shall be assigned to a magistrate judge, who shall
23 proceed in accordance with the provisions of 18 U.S.C. § 3401 and FR Cr P 58.

1 **[NEW] LR Cr P 58.3 Petty Offenses.** (a) *Schedule of petty offenses.* The Appendix to
2 the Local Criminal Rules contains a Schedule of Petty Offenses. The Schedule, which may
3 be modified by the Chief Judge, lists petty offenses, as defined in 18 U.S.C. § 19, that occur
4 within the territorial jurisdiction of the United States, whether originating under federal
5 statute or regulation or under applicable state statute by virtue of the Assimilated Crimes
6 Act, 18 U.S.C. § 13.

7 (b) *Forfeiture of collateral in lieu of appearance.* A defendant charged with
8 a petty offense listed in the Schedule may post the collateral for that offense, in lieu of
9 appearing before a magistrate judge to answer the charge, unless the offense is noted as
10 “mandatory appearance” or the arresting or citing officer deems the offense to be
11 “aggravated.” Posting the collateral signifies that the defendant does not contest the charge
12 or request a hearing before the designated magistrate judge. The posted collateral shall be
13 administratively forfeited.

14 (c) *Failure to post collateral.* If a defendant does not post the collateral and fails
15 to appear before the designated magistrate judge for trial on the cited petty offense(s), the
16 collateral amount listed for the offense on the Schedule shall be forfeited to the United
17 States. Forfeiture of the collateral shall be tantamount to a finding of guilty. Failure by a
18 defendant to appear to answer an offense for which appearance is mandatory, or an offense
19 that is aggravated, may result in an arrest warrant being issued for the defendant.

20 (d) *Certification of convictions of traffic violations.* Either the Clerk or the
21 designated magistrate judge shall certify to the proper authority the record of any
22 conviction of a traffic violation, as required by the applicable state statutes.

1 (e) *Arrest.* Nothing contained in this Local Rule shall prohibit a law enforcement
2 officer from arresting an offender for committing any offense, including petty offenses for
3 which collateral may be posted and forfeited, and upon arrest, taking the person charged
4 without unnecessary delay before the nearest magistrate judge.

5
6 **[NEW] LR Cr P 59.1. General Authority of Magistrate Judges.** A magistrate judge
7 is a judicial officer of the district court. A magistrate judge of this district is designated to
8 perform, and may be assigned, any duty allowed by law to be performed by a magistrate
9 judge. Performance of a duty by a magistrate judge will be governed by the applicable
10 provisions of federal statutes and rules, the general procedural rules of this court, and the
11 requirements specified in any order or reference from a district judge. In performing a
12 duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and
13 witnesses to appear; require briefs, proofs, and argument; and conduct any hearing,
14 conference, or other proceeding the magistrate judge deems appropriate.

15
16 **[NEW] LR Cr P 59.2. Statutory Duties.** Magistrate judges are authorized or specially
17 designated to perform the duties prescribed by 28 U.S.C. § 636, and such other duties as
18 may be assigned by the court or a district judge which are not inconsistent with the
19 Constitution and laws of the United States.

20
21 **[NEW] LR Cr P 59.3. Duties under the Federal Rules of Criminal Procedure.**
22 Magistrate judges are authorized or specially designated to perform all duties attributed to
23 magistrate judges by the Federal Rules of Criminal Procedure.

1 **[NEW] L R Cr P 59.4. Miscellaneous Duties.** Magistrate judges are also authorized to:

- 2 (a) exercise general supervision of criminal calendars,
3 conduct calendar and status calls, conduct hearings, and
4 determine motions to expedite or postpone the trial of cases
5 for the district judges;
6
7 (b) conduct pretrial conferences, scheduling conferences, and
8 related pretrial proceedings;
9
10 (c) conduct arraignments in criminal cases not triable by a
11 magistrate judge and take not guilty pleas in such cases;
12
13 (d) with the consent of the parties, conduct arraignments in
14 criminal cases not triable by a magistrate judge, receive a
15 defendant's guilty plea, and submit proposed findings of fact
16 and recommendations as to whether the presiding district
17 judge should accept the guilty plea, and find the defendant
18 guilty;
19
20 (e) impanel grand juries, conduct hearings as to prospective
21 jurors who fail to appear for grand jury duty, determine the
22 qualification of specific grand jurors to participate in the
23 investigation of particular matters, determine motions to
24 quash grand jury subpoenas, and receive grand jury returns;
25
26 (f) with the consent of the parties, conduct voir dire and
27 preside over the selection of petit juries;
28
29 (g) accept waivers of indictment;
30
31 (h) conduct necessary proceedings leading to the potential
32 revocation of probation or supervised release;
33
34 (i) issue subpoenas, writs of habeas corpus ad testificandum
35 or habeas corpus ad prosequendum, or other orders necessary
36 to obtain the presence of parties, witnesses, or evidence for
37 court proceedings;
38
39 (j) order the exoneration or forfeiture of bonds;
40
41 (k) conduct proceedings for initial commitment of narcotic
42 addicts under Title III of the Narcotic Addict Rehabilitation
43 Act, 42 U.S.C. §§ 3401 *et seq.*;
44

1 (l) order the examination of a defendant to determine his or
2 her mental competence to understand the nature and
3 consequences of the proceeding against the defendant or to
4 assist properly in his or her defense, and conduct hearings on
5 a defendant's mental competence, and to determine if a
6 defendant is presently suffering from a mental disease or
7 defect which would give rise to the defense of insanity, or
8 which is inconsistent with the mental state required for the
9 offense charged, all as provided in 18 U.S.C. § 4241 *et seq.*;

10
11 (m) supervise proceedings conducted pursuant to letters
12 rogatory as provided in 28 U.S.C. § 1782(a);

13
14 (n) issue orders of withdrawal of funds from the court
15 registry pursuant to 28 U.S.C. § 2042;

16
17 (o) conduct extradition proceedings in accordance with 18
18 U.S.C. § 3184;

19
20 (p) issue orders or warrants authorizing acts necessary in the
21 performance of the duties of administrative and regulatory
22 agencies and departments of the United States; and

23
24 (q) serve with designated committees or other judicial
25 officers, participate in promulgation of local rules and
26 procedures, administration of the forfeiture of collateral
27 system, and other functions of court governance as approved
28 by the Chief Judge.

29
30 **[NEW] LR Cr P 59.5. Assignment of Matters to Magistrate Judges by Division.** To
31 the extent not provided for in these Local Rules and the Federal Rules of Criminal
32 Procedure, criminal cases shall be assigned to the magistrate judge for the division in which
33 the alleged offense(s) occurred. In the case of offense(s) which allegedly occurred in more
34 than 1 division, the case shall be assigned to the magistrate judge for the division in which
35 the majority of the allegedly criminal conduct occurred.

1 **[NEW] LR Cr P 59.6. Other Duties Assigned and Matters Referred.** Individual district
2 judges may, in their discretion, assign or request magistrate judges to perform such other
3 duties as are not inconsistent with the Constitution and laws of the United States, including
4 but not limited to conducting hearings, including evidentiary hearings, and submitting
5 proposed findings of fact and recommendations for the disposition of motions to dismiss or
6 quash an indictment or information, and to suppress evidence.